

1 **So Ordered.**



2 *Frank L. Kurtz*
3 Frank L. Kurtz
4 Bankruptcy Judge

5 **Dated: March 29th, 2013**

6
7
8
9 UNITED STATES BANKRUPTCY COURT
10 EASTERN DISTRICT OF WASHINGTON

11 In re ...

12 **PRIUM SPOKANE BUILDINGS, L.L.C.,**

13
14
15 Debtor.

No. **10-06952-FLK11**
Chapter 11

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE:
CONFIRMATION OF SECOND
AMENDED AND MODIFIED
PLAN OF REORGANIZATION**

16
17
18
19 This matter came on for hearing upon the Second Amended Plan Of Reorganization
20 filed by Prium Spokane Buildings, L.L.C. (the "Debtor") on January 16, 2013. The Court
21 considered the comments of counsel, and the records and files herein, including the
22 following:

- 23
24
 - Order Authorizing Compromise Of Claims And Approving Settlement
25 And Release Agreement, And Denying Motion For Order Of Dismissal
[Docket No. 342];

- First Amended Disclosure Statement [*Docket No. 410*];
- First Amended Plan Of Reorganization [*Docket No. 411*];
- List Classifying Claims And Interests [*Docket No. 415*];
- Mastro Trustee's Objection To Debtor's First Amended Disclosure Statement [*Docket No. 416*];
- Notice Of Hearing Re: First Amended Disclosure Statement [*Docket No. 418*];
- Stipulation For Funding Remaining Settlement Payment Pursuant To Settlement And Release Agreement (the "Stipulation") [*Docket No. 429*];
- Order Approving First Amended Disclosure Statement, As Modified, And Setting Confirmation Hearing [*Docket No. 433*];
- Second Amended Disclosure Statement [*Docket No. 434*];
- Second Amended Plan Of Reorganization [*Docket No. 435*];
- Notice of Approval Of Second Amended Disclosure Statement, And Matters Relating To Confirmation Of Plan [*Docket No. 436*];
- Report Of Balloting and Ballot Summary [*Docket No. 447 and 447-1*];
- Declaration Of Glenn R. Davis In Support Of Confirmation Of Second Amended Plan Of Reorganization [*Docket No. 456*]; and
- Declaration Of Jeffrey Silesky In Support Of Confirmation Of Second Amended Plan Of Reorganization [*Docket No. 461*];

Based on the foregoing, the Court enters the following FINDINGS OF FACT:

1. On November 8, 2012, the Debtor filed the First Amended Disclosure Statement and the First Amended Plan of Reorganization.

1 2. On December 11, 2012, James F. Rigby, the Chapter 7 Trustee in the
2 bankruptcy estate of Michael R. Mastro filed the Mastro Trustee's Objection To Debtor's
3 First Amended Disclosure Statement (the "Objection").
4

5 3. On January 10, 2013, a hearing was held regarding the Objection, after which
6 the Court, on January 15, 2013, entered an Order Approving First Amended Disclosure
7 Statement, As Modified, And Setting Confirmation Hearing (the "Order").
8

9 4. In accordance with the Order, the Debtor filed a Second Amended Disclosure
10 Statement (the "Disclosure Statement") and a Second Amended Plan Of Reorganization (the
11 "Plan") on January 16, 2013.
12

13 5. The Debtor transmitted the Disclosure Statement, the Plan, and related
14 materials to the Master Mailing List on January 16, 2013.

15 6. Similar claims, such as unsecured trade debt and unsecured non-trade debt,
16 are classified together, and are treated equally within each class. The Plan provides the
17 same treatment for each claim or interest within a particular class.
18

19 7. The Debtor did not solicit acceptances or rejections of the Plan except as
20 authorized by the Order.
21

22 8. The Plan provides for payment of all allowed Priority Tax Claims in regular
23 installment payments in cash of a total value, as of the Effective Date of the Plan, equal to
24 the allowed amount of such claim over a period ending not later than five (5) years after the
25 Petition Date in a manner not less favorable than the most favored nonpriority unsecured

1 claim provided for by the Plan (other than cash payments made to a class of creditors under
2 11 U.S.C. § 1122(b)). The Debtor believes that there are no Priority Tax Claims.

3
4 9. The Plan has been proposed in good faith and not by any means forbidden by
5 law.

6 10. The compensation of Davidson Backman Medeiros PLLC and Berreth, Smith
7 & Associates, PLLC (formerly Berreth, Lochmiller & Associates, PLLC) for services
8 rendered through the Confirmation Date will be subject to Court approval after notice and
9 hearing. Until the closing of this case, Davidson Backman Medeiros PLLC and Berreth,
10 Smith & Associates, PLLC, at the Debtor's discretion, will be employed after confirmation
11 at their normal and usual hourly rates, plus reimbursement for expenses.
12
13

14 11. The Debtor will take all actions that are needed to implement the terms of the
15 Plan, such as the filing of an interpleader action, and will then close this case. There will be
16 no insiders compensated by the debtor after confirmation, although the existing members
17 will continue in office to implement the Plan. There will be no other insiders employed or
18 retained after reorganization.
19

20 12. The Plan provides for no rate changes after confirmation of the Plan with any
21 governmental regulatory commission with jurisdiction over the rates of the Debtor.
22

23 13. Class 2, Class 3, Class 4, Class 5, Class 6, Class 7, and Class 8 are impaired.
24 Ballots were cast by Class 2, Class 4, and Class 6, with all ballots voted in acceptance of the
25 Plan, resulting in acceptance of the Plan by Class 2, Class 4, and Class 6.

1 14. According to the Declaration of Glenn R. Davis and the Liquidation Analysis,
2 creditors will receive a greater distribution under the Plan than would be received if the
3 assets of the Debtor were liquidated by a Chapter 7 Trustee or by any other means.
4

5 15. The Plan provides for the liquidation of the assets of the Debtor. There will be
6 no need for further financial reorganization of the Debtor.
7

8 16. The Plan provides for payment of administrative claims upon allowance by
9 the Court.

10 17. The Plan provides for payment of all U.S. Trustee fees when due, through the
11 closing of the case.
12

13 18. The Debtor sponsors no retiree benefits.

14 19. The Debtor is a Washington limited liability company debtor engaged in
15 business.
16

17 Based on the foregoing FINDINGS OF FACT, the Court enters the following
18 CONCLUSIONS OF LAW:

19 1. The Plan has been accepted in writing by the creditors and equity security
20 holders whose acceptance is required by law; and
21

22 2. The provisions of Chapter 11 have been complied with; the Plan has been
23 proposed in good faith and not by means forbidden by law; and
24

25 3. Each holder of a claim or interest has accepted the Plan or will receive or
retain under the Plan, property of a value, as of the Effective Date of the Plan, that is not less

1 than the amount that such holder would receive or retain if the Debtor were liquidated under
2 Chapter 7 of the Code on such date, or the Plan does not discriminate unfairly, and is fair
3 and equitable with respect to each class of claims or interests that are impaired under the
4 Plan and has not accepted the Plan; and

5
6 4. All payments made or promised by the Debtor by a person issuing securities
7 or acquiring property under the Plan or by any other person for services or for costs and
8 expenses in, or in connection with, the Plan and incident to the case, have been fully
9 disclosed to the Court and are reasonable or, if to be fixed after confirmation of the Plan,
10 will be subject to approval of the Court; and
11

12
13 5. The identity, qualifications, and affiliations of the persons who are to be
14 directors or officers, if any, of the Debtor after confirmation of the Plan have been fully
15 disclosed, and the appointment of such persons to such offices or the continued appointment
16 of such persons to such offices, or their continuance therein, is equitable and consistent with
17 the interests of the creditors and equity security holders and with public policy; and
18

19 6. The identity of any insider that will be employed or retained by the Debtor and
20 their compensation has been fully disclosed; and
21

22 7. Confirmation of the Plan is not likely to be followed by the need for further
23 financial reorganization of the Debtor; and
24
25

1 8. The Plan shall be substantially consummated pursuant to 11 U.S.C. § 1101(2)
2 upon commencement of the distribution under the Plan, and upon full payment of all
3 administrative expenses, but in no event before the thirtieth day after the Effective Date.
4

5 /// End of Order ///

6 Presented by:

7 DAVIDSON BACKMAN MEDEIROS PLLC
8

9 /s/ Barry W. Davidson
10 Barry W. Davidson, WSBA No. 07908
11 Attorney for Prium Spokane Buildings, L.L.C.
12 1550 Bank of America Financial Center
13 601 West Riverside Avenue
14 Spokane, Washington 99201
15 Telephone: (509) 624-4600
16
17
18
19
20
21
22
23
24
25